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Memorandum Endorsement

Lessam and Johnson v. Taylor et al., 07 Civ. 10601 (LLS)

Defendants' February 15, 2011 motion for reconsideration and reargument is denied. Contrary to its central theme, the Court did not reverse or alter the burden of proof on plaintiffs to show access by Pope to plaintiffs' music. Oversimplifying somewhat, Lessam's testimony that he played "the six on that one [which included 'Elevator'] for sure" and "I know he heard it in the store" sufficed to raise a solid issue about that fact. If those statements are accepted by a jury, plaintiffs' burden of proving Pope's access is met. Lessam's inability to be more precise, and defendants' other evidence (including plaintiffs' lack of better evidence) should be considered in opposition to that assertion, but do not resolve the issue in defendants' favor as a matter of law.

Similarly, from Pope's working relationship with the How We Do Writers, including work on two songs that appear on the same album as "How We Do", a jury might infer that the How We Do Writers had access to "Elevator". The jury may determine that plaintiffs have not carried their burden on the evidence as a whole, but that is a matter for the jury to decide.

So ordered.

Dated: New York, New York
March 22, 2011

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

MEMORANDUM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RYAN LESSEM and DOUGLAS JOHNSON,

Plaintiffs,

v.

JAYCEON TERRELL TAYLOR p/k/a THE
GAME, et al.,

Defendants.

CASE NO. 07-CV-10601 (LLS)

**NOTICE OF MOTION FOR
RECONSIDERATION AND
REARGUMENT**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, Defendants Windswept Holdings, LLC, d/b/a Music of Windswept, UMG Recordings, Inc., Interscope Records, a Division of UMG Recordings, Inc. and Universal Music Publishing Group, Inc. (collectively, the "Defendants") respectfully move this Court pursuant to Local Civil Rule 6.3 before the Honorable Louis L. Stanton, United States District Court Judge for the Southern District of New York, for reconsideration and reargument of the portion of the Court's February 1, 2011 Opinion and Order (the "Opinion") that adjudicated the Defendants' motion for summary judgment on the issue of access.

Dated: New York, New York
February 15, 2011

MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Jeffrey M. Movit

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RYAN LESSEM and DOUGLAS JOHNSON,

Plaintiffs,

v.

JAYCEON TERRELL TAYLOR p/k/a THE
GAME, et al.,

Defendants.

CASE NO. 07-CV-10601 (LLS)

CERTIFICATE OF SERVICE

I, Jeffrey M. Movit, hereby certify that on February 15, 2011, the attached document was filed via CM/ECF, which will provide electronic copies and notification of filing to counsel of record.

Dated: New York, New York
February 15, 2011

MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Jeffrey M. Movit

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